

mitigation measures, necessary for a conformity determination will be both State or tribal and federally enforceable. Enforceability through the applicable SIP or TIP will apply to all persons who agree to mitigate direct and indirect emissions associated with a Federal action for a conformity determination.

[58 FR 63253, Nov. 30, 1993, as amended at 75 FR 17277, Apr. 5, 2010]

§ 93.161 Conformity evaluation for Federal installations with facility-wide emission budgets.

(a) The State, local or tribal agency responsible for implementing and enforcing the SIP or TIP can in cooperation with Federal agencies or third parties authorized by the agency that operate installations subject to Federal oversight develop and adopt a facility-wide emission budget to be used for demonstrating conformity under § 93.158(a)(1). The facility-wide budget must meet the following criteria:

- (1) Be for a set time period;
- (2) Cover the pollutants or precursors of the pollutants for which the area is designated nonattainment or maintenance;
- (3) Include specific quantities allowed to be emitted on an annual or seasonal basis;
- (4) The emissions from the facility along with all other emissions in the area will not exceed the emission budget for the area;
- (5) Include specific measures to ensure compliance with the budget, such as periodic reporting requirements or compliance demonstration, when the Federal agency is taking an action that would otherwise require a conformity determination;
- (6) Be submitted to EPA as a SIP revision;
- (7) The SIP revision must be approved by EPA.

(b) The facility-wide budget developed and adopted in accordance with paragraph (a) of this section can be revised by following the requirements in paragraph (a) of this section.

(c) Total direct and indirect emissions from Federal actions in conjunction with all other emissions subject to General Conformity from the facility that do not exceed the facility budget

adopted pursuant to paragraph (a) of this section are “presumed to conform” to the SIP and do not require a conformity analysis.

(d) If the total direct and indirect emissions from the Federal actions in conjunction with the other emissions subject to General Conformity from the facility exceed the budget adopted pursuant to paragraph (a) of this section, the action must be evaluated for conformity. A Federal agency can use the compliance with the facility-wide emissions budget as part of the demonstration of conformity, *i.e.*, the agency would have to mitigate or offset the emissions that exceed the emission budget.

(e) If the SIP for the area includes a category for construction emissions, the negotiated budget can exempt construction emissions from further conformity analysis.

[75 FR 17277, Apr. 5, 2010]

§ 93.162 Emissions beyond the time period covered by the SIP.

If a Federal action would result in total direct and indirect emissions above the applicable thresholds which would be emitted beyond the time period covered by the SIP, the Federal agency can:

- (a) Demonstrate conformity with the last emission budget in the SIP; or
- (b) Request the State or Tribe to adopt an emissions budget for the action for inclusion in the SIP. The State or Tribe must submit a SIP or TIP revision to EPA within 18 months either including the emissions in the existing SIP or establishing an enforceable commitment to include the emissions in future SIP revisions based on the latest planning assumptions at the time of the SIP revision. No such commitment by a State or Tribe shall restrict a State's or Tribe's ability to require RACT, RACM or any other control measures within the State's or Tribe's authority to ensure timely attainment of the NAAQS.

[75 FR 17278, Apr. 5, 2010]

§ 93.163 Timing of offsets and mitigation measures.

(a) The emissions reductions from an offset or mitigation measure used to

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demonstrate conformity must occur during the same calendar year as the emission increases from the action except, as provided in paragraph (b) of this section.

(b) The State or Tribe may approve emissions reductions in other years provided:

(1) The reductions are greater than the emission increases by the following ratios:

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| (i) Extreme nonattainment areas | 1.5:1 |
| (ii) Severe nonattainment areas | 1.3:1 |
| (iii) Serious nonattainment areas | 1.2:1 |
| (iv) Moderate nonattainment areas | 1.15:1 |
| (v) All other areas | 1.1:1 |

(2) The time period for completing the emissions reductions must not exceed twice the period of the emissions.

(3) The offset or mitigation measure with emissions reductions in another year will not:

- (i) Cause or contribute to a new violation of any air quality standard,
- (ii) Increase the frequency or severity of any existing violation of any air quality standard; or
- (iii) Delay the timely attainment of any standard or any interim emissions reductions or other milestones in any area.

(c) The approval by the State or Tribe of an offset or mitigation measure with emissions reductions in another year does not relieve the State or Tribe of any obligation to meet any SIP or Clean Air Act milestone or deadline. The approval of an alternate schedule for mitigation measures is at the discretion of the State or Tribe, and they are not required to approve an alternate schedule.

[75 FR 17278, Apr. 5, 2010]

§ 93.164 Inter-precursor mitigation measures and offsets.

Federal agencies must reduce the same type of pollutant as being increased by the Federal action except the State or Tribe may approve offsets or mitigation measures of different precursors of the same criteria pollutant, if such trades are allowed by a

State or Tribe in a SIP or TIP approved NSR regulation, is technically justified, and has a demonstrated environmental benefit.

[75 FR 17278, Apr. 5, 2010]

§ 93.165 Early emission reduction credit programs at Federal facilities and installation subject to Federal oversight.

(a) Federal facilities and installations subject to Federal oversight can, with the approval of the State or tribal agency responsible for the SIP or TIP in that area, create an early emissions reductions credit program. The Federal agency can create the emission reduction credits in accordance with the requirements in paragraph (b) of this section and can use them in accordance with paragraph (c) of this section.

(b) Creation of emission reduction credits.

(1) Emissions reductions must be quantifiable through the use of standard emission factors or measurement techniques. If non-standard factors or techniques to quantify the emissions reductions are used, the Federal agency must receive approval from the State or tribal agency responsible for the implementation of the SIP or TIP and from EPA's Regional Office. The emission reduction credits do not have to be quantified before the reduction strategy is implemented, but must be quantified before the credits are used in the General Conformity evaluation.

(2) The emission reduction methods must be consistent with the applicable SIP or TIP attainment and reasonable further progress demonstrations.

(3) The emissions reductions cannot be required by or credited to other applicable SIP or TIP provisions.

(4) Both the State or Tribe and Federal air quality agencies must be able to take legal action to ensure continued implementation of the emission reduction strategy. In addition, private citizens must also be able to initiate action to ensure compliance with the control requirement.

(5) The emissions reductions must be permanent or the timeframe for the reductions must be specified.

(6) The Federal agency must document the emissions reductions and provide a copy of the document to the